

CASE NO. 4:21-cv-00124-M

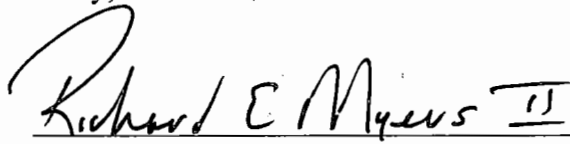
Defendant.

Case 4:21-cv-00124-M Document 11 Filed 02/09/22 Page 1 of 3

Four criteria guide a district court's discretion in dismissing a case under Rule 41(b). The court considers "(1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal." *Attkisson*, 925 F.3d at 625. First, the Plaintiff has demonstrated a lack of personal responsibility by failing to respond to a court order. That alone has been deemed sufficient to dismiss a case for failure to prosecute. *See, e.g., Attkisson*, 925 F.3d at 625 ("This Court has previously upheld an involuntary dismissal under Rule 41(b) where the plaintiff 'failed to respond to a specific directive from the [trial] court.'"); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) ("Here, we think the Magistrate's explicit warning that a recommendation of dismissal would result from failure to obey his order is a critical fact that distinguishes this case from those cited by appellant."); *Thomas v. Arn*, 474 U.S. 140, 147 (1985) ("Had petitioner failed to comply with a scheduling order or pay a filing fee established by a court of appeals, that court could certainly dismiss the appeal."). The court's Order to Show Cause expressly directed the Plaintiffs to demonstrate jurisdiction or the case would be dismissed. [DE 8]. Second, the court is unaware of any prejudice to the Defendants because they have not yet had to respond in this case. Third, the Plaintiff not only failed to respond to this court's Order to Show Cause but did so after receiving an extension of time from this court [DE 10]. Moreover, on September 7, 2021, Magistrate Judge Robert Numbers filed an Order & Memorandum & Recommendation recommending this court dismiss the Plaintiff's Complaint, in part, for lack of subject-matter jurisdiction. [DE 6]. The Plaintiff's subsequent filings did not address the Magistrate Judge's concerns. [DE 7]. Fourth, this court cannot proceed without jurisdiction. *See, e.g., Home Buyers Warranty Corp. v. Hanna*, 750 F.3d 427, 432 (4th Cir. 2014). However, any harm to the Plaintiff from dismissal is mitigated because the court will dismiss the Plaintiff's Complaint without prejudice.

Therefore, because Plaintiff has failed to respond to this court's Order or demonstrate good cause for their failure to do so, Plaintiff's Complaint is hereby DISMISSED WITHOUT PREJUDICE.

SO ORDERED this 9th day of February, 2022.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE